





The Town of Fenwick Island

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Regular Meeting of the Town Council
The Town of Fenwick Island
February 26, 2010 @3:30 PM
AGENDA

1. Flag Salute and Call to Order
2. Topics for Discussion and Possible Action
 - a. DNREC Lifeguard Contract – Council Member Smallwood
3. Approval of Minutes from January 22, 2010 Regular Council Meeting.
4. Treasurer's Report: Council Member Bunting
5. Town Manager's Report – Win Abbott
6. Department Reports: Beach Patrol, Building, Public Works and Police Department
7. Committee Reports: Beach, Environmental
8. Planning Commission: Winnie Lewis
9. Charter and Ordinance: Council Member Weistling
 - a. Proposed First Reading Chapter 77 Disorderly Conduct
 - b. Proposed First Reading Chapter 107 Noise
 - c. Proposed Second Reading Chapter 95 Hazardous Materials
 - d. Proposed Second Reading Chapter 102 Lighting
10. Old Business
11. New Business – No Action to be Taken
12. Public participation
13. President's Report
14. Upcoming Events and Meetings
 - a. March 1 Budget Committee – 10:00AM
 - b. March 1 Public Safety Building Meeting – 1:00PM
 - c. March 2 C&O Committee – 9:30 AM
 - d. March 9 Environmental Committee – 10:30 AM
 - e. March 9 Cultural & Historic Preservation Subcommittee – 1:30 PM
 - f. March 9 Planning Commission – 2:30 PM
 - g. March 20 Dune Grass Planting – 9:00 AM
 - h. March 26 Regular Council Meeting – 3:30 PM
15. Adjournment

This agenda is subject to change to include the deletion of items and the addition of items, including Executive Sessions, which arise at the time of the meeting.

Posted: February 16, 2010; February 19, 2010 addition of March 1 Committee meetings

Minutes of the January 22, 2010 Regular Council Meeting

DRAFT

Call to Order and Flag Salute at 3:30 pm by Mayor Serio.

Council in Attendance: Weistling, Tingle, Serio, Langan, Carmean, and Smallwood.

Council Absent: Bunting

Presentation: DNREC Division of Soil & Water Conservation

Tony Pratt and Maria Sadler presented a summary of DNREC activities relative to the state of the beach and crossovers for areas affected by the November 2009 Northeaster. Audio of the presentation is included in the audio of the January 22, 2010 meeting. A copy of supporting materials is included in the bound meeting materials for January 22, 2010 meeting packet found in the Town Manager's office.

DISCUSSION

Council Member Smallwood asked Mr. Pratt to explain the use of rope and pole dune fencing vs. standard snow fencing. Mr. Pratt explained that the new rope/pole arrangement has been found to be more effective in order to maintain safe sand levels on the dunes vs. standard snow fencing. In response to a question from Council Member Langan, Mr. Pratt advised that DNREC will continue to use snow fencing on crossovers and that DNREC continues to monitor the condition of dunes and crossovers for safety but that the sand is coming back slowly. He also noted that his department will continue to push sand up from the water line to stabilize the dunes and to give them a broader structure.

PUBLIC PARTICIPATION

Mike Quinn asked if DNREC would allow citizen volunteers to assist them. Mr. Pratt advised that the public is invited to assist in selected activities and especially with the annual dune grass planting. Maria Sadler will advise Town Hall of the actual date (sometime in March 2010).

Topics for Discussion and Possible Action:

- a. Resolution # 41-2010 Addendum to Fee Schedule
Motion to adopt Resolution #41-2010 – Council Member Carmean
Second – Council Member Langan

DISCUSSION

Mayor Serio believed the Resolution #41-2010 to be incomplete as presented. Council Member Weistling advised that previously the fees for bonfires was set by Ordinance. Council revised the ordinance but did not include the fee in the Fee Schedule established by Resolution #38-2009. This Resolution adds the fee for bonfires to the Fee Schedule.

Motion to adopt Resolution #41-2010 Addendum to Fee Schedule with the inclusion of explanatory information regarding permit fees and deposits – Council Member Carmean
Second – Council Member Langan

Vote to adopt Resolution #41-2010 (6-0)
Resolution #41-2010 Passed

- b. Purchase of Speed Signs – Council Member Smallwood
Motion to authorize the purchase of solar-powered speed signs by the Fenwick Island Police Department using \$8,000 from the General Funds Account to be reimbursed upon receipt of grant funds – Council Member Smallwood
Second – Council Member Carmean

Minutes of the January 22, 2010 Regular Council Meeting

DISCUSSION

None

Vote to authorize the purchase of solar-powered speed signs by the Fenwick Island Police Department using \$8,000 from the General Funds Account to be reimbursed upon receipt of grant funds (6-0)

Motion Passed

Approval of Minutes:

Motion to Approve the Minutes of December 11, 2009 Meeting - Council Member Carmean

Second: Council Member Smallwood

DISCUSSION:

None

Vote to approve minutes of December 11, 2009 Meeting (6-0)

Minutes Approved

Treasurer's Report:

Council Member Bunting was not present. Mayor Serio asked Town Manager Abbott to explain the report.

DISCUSSION

None

Motion to Accept the Treasurer's Report - Council Member Tingle

Second - Council Member Carmean

Vote to accept the Treasurer's Report (6-0)

Treasurer's Report Approved

2009-2010 Mid-year Budget Review – Win Abbott

Town Manager Abbott reported that the Budget Committee met recently to review the status of the Town's funds in relation to the current budget. Progress was found to be satisfactory and no changes will be made.

Town Manager Report:

- Town Manager Abbott reported that the Town is the grand prize winner of the Extreme Lite Website Makeover contest sponsored by CivicPlus of Manhattan, Kansas. Official announcement will be made on February 3, 2010. The prize is valued at \$6900 and includes a web site redesign and one year of service.
- Mr. Abbott reported that, thanks to the efforts of Chief Boyden, citizens may now sign on to Nixle.com to receive public safety alerts and warnings.
- The street renaming project is on track with two streets still to be changed.
- Recycling total for November was 7.01 tons

DISCUSSION

Council Member Carmean noted that she has signed on to the Nixle program but did not receive notice of a recent assault that occurred within Town limits. Chief Boyden advised that information of this nature is not for broadcast since it appears to have been a targeted attack involving a juvenile. It was not random in nature.

Department Reports:

- Beach Patrol –No report
- Building Official – Report is included in the council packet.
- Public Works: Report is included in the council packet. Town Manager Abbott reported that the department is working on a study to determine the work load involved in median maintenance.

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- **Fenwick Island Police Department:** In addition to the information included in the council packet, Chief Boyden reported that his department has taken delivery of a new vehicle that is currently in the shop being outfitted. The Department underwent a successful audit by the Department of Justice regarding handling of grant funds. Chief Boyden encouraged everyone to sign up for Nixle – it is free of charge and easy to use.

DISCUSSION

Council Member Smallwood requested that the monthly report include the number of hours spent responding to out of town calls as well as officer time spent in court. Chief Boyden advised that he is able to include the out of town calls but that determining the time spent in court is more difficult.

Committee Reports:

- **Beach Committee** –Pat Schuchman reported on behalf of Becca McWilliams. The Fenwick Freeze 2010 was extremely successful. Freeze 2009 had 116 pre-registered; Freeze 2010 had 134 pre-registered. The event raised \$2500 for the Lifeguard Fund.
- **Environmental Committee** –Council Member Carmean reported that the next meeting is February 9, 2009 @10:30 AM. Todd Smallwood will make a presentation on the Center for the Inland Bays. Buzz Henifin reported that the chairmanship has changed to Co-chairs Vicki Carmean and John Belian.

Planning Commission:

Report included in Council book.

Charter & Ordinance:

- **Council Member Weistling** motioned to accept a First Reading of Chapter 95 Hazardous Materials (included at the end of these minutes)
Council Member Tingle seconded.

DISCUSSION

Council Member Weistling noted that the proposed change add “and storage” to §95-2 Applicable transportation law.

PUBLIC PARTICIPATION

None

Vote to accept the First Reading of Chapter 95 – Hazardous Materials: All in Favor.

First Reading passed (6-0)

- **Council Member Weistling** motioned to accept a First Reading of Chapter 102 - Lighting (included at the end of these minutes)
Council Member Langan seconded.

DISCUSSION

Council Member Weistling noted that the proposed change deletes in its entirety the current Chapter 102 – Lighting replacing it with new language in this First Reading. Residential and Commercial code is combined resulting in a shorter, more concise document. Mayor Serio asked for an explanation of “fully shielded.” Council Member Weistling advised that a fully shielded light will not show a bulb. Council Member Carmean advised that the Town will take action only if it receives a complaint from a neighbor.

PUBLIC PARTICIPATION

None

Vote to accept the First Reading of Chapter 102 – Lighting: All in Favor.

First Reading passed (6-0)

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- Council Member Weistling asked Building Official, Pat Schuchman, to explain on-line access to pending code. Mrs. Schuchman advised there are two ways to access Town Code online: 1) Use the Town's website "Guides and Forms" page to access General Code; 2) Log on to www.GeneralCode.com. The page will show a link to "legislation not yet codified." This includes Approved Second Readings which will be printed as updates to the Code Book when the annual automatic update is printed by General Code.

Old Business:

- None

Public Participation:

- John Belian (1 W Houston St) – announced that the Fenwick Island Fishing Club will take part in a march to Washington DC on February 24, 2010 to protest pending legislation. Contact Mr. Belian for more information.
- Buzz Henifin (48 Windward Way) – is unhappy with the hand-outs for the council meeting and wants an entire council packet made available for each and every attendee at the meeting. Mary Pat Kyle (1205 Bunting Ave) agreed with Mr. Henifin.
- Pete Frederick (1605 Bunting Ave) – noted that he had difficulty downloading the council packet. Packet can be found at the Agendas/Minutes page on the Town's website. Scroll down about half a page to locate the document.
- Mike Quinn (5 W Houston St) – noted that font be larger if the town intends to continue using a PowerPoint presentation at its meetings.

President's Report:

- Mayor Serio noted that she has had preliminary meetings with DNREC regarding lifeguard coverage and discussions are continuing.
- Council Member Weistling asked that council draft a letter to all government representatives expressing its support of beach renewal efforts as put forward by Tony Pratt in his presentation.
- Mayor Serio advised that plans for a Public Safety Building are on track. She will meet with DEMA and encourage them to meet with the Town in order to stay on top of the project.
- USA Today newspaper recently published an short article regarding the purchase of speed signs for the town.
- The Quarterly Budget Committee meeting was thorough and beneficial as an update of the Town's progress.
- Mayor Serio made note of upcoming meetings.

Motion to Adjourn: Council Member Weistling

Second: Council Member Langan

All in favor Motion passed (6-0)

Mayor Serio adjourned the meeting at 4:50 PM.

Respectfully submitted,

Agnes DiPietrantonio, Town Clerk
For Diane Tingle, Secretary

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NOTICE

Resolution #41-2010 Addendum to Fee Schedule

On January 22, 2010 The Fenwick Island Town Council
Passed the Following Addendum to Resolution #38-2009
Fee Schedule

O - OTHER FEES

(1) Beach Bonfire Permit - \$25 & \$100

This resolution sets fee structure for Beach Bonfire Permits - Non-refundable Permit Fee (\$25) and Refundable Deposit (\$100). This fee structure is to be included in the Fee Schedule as set out by Resolution #38-2009.

Attest: _____
Agnes D. DiPietrantonio, Town Clerk

Audrey Serio, President of Council

Diane B. Tingle, Council Secretary

I, Diane B. Tingle, Secretary of the Town Council, of the Town of Fenwick Island, Delaware, do hereby certify that the foregoing is a true and correct copy of the Resolution passed with the noted exception by the President and Council at a meeting on January 22, 2010, at which a quorum was present and voting throughout and the same is still in force and effect.

Date

Diane B. Tingle, Council Secretary

AS/adip Addendum to Fee Schedule
PASSED January 22, 2010

Resolution #41-2010

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Approved First Reading – January 22, 2010
Proposed Second Reading – February 26, 2010

Chapter 95. HAZARDOUS MATERIALS

EXISTING:

§ 95-1. Definitions.

A. For use herein, this chapter adopts the definitions of "hazardous material," "hazardous substance" and "hazardous waste" as used by the United States Department of Transportation as more fully set forth in CFR 171.8. Items included within the definition of "hazardous material," "hazardous substance" and "hazardous waste" are listed in the Hazardous Material Table and CERCLA List as defined by the United States Department of Transportation and found in 49 CFR 172.101.

B. As used herein, "hazardous material" includes hazardous material, hazardous substance and hazardous waste.

§ 95-2. Applicable transportation law.

All federal, state and county regulations concerning the transport of any hazardous material shall be applicable at all times on all streets, roadways, alleys, real estate and waterways in the Town of Fenwick Island.

PROPOSED:

Chapter 95. HAZARDOUS MATERIALS AND STORAGE

§ 95-2. Applicable transportation law.

All federal, state and county regulations concerning the transport and storage of any hazardous material shall be applicable at all times on all streets, roadways, alleys, real estate and waterways in the Town of Fenwick Island.

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Approve First Reading – January 22, 2010
Proposed Second Reading – February 26, 2010

Chapter 102 – Lighting

§ 102-1. Purpose.

The purpose of this chapter regulating lighting is as follows:

- A. Permit reasonable uses of outdoor lighting for nighttime safety, utility, security and enjoyment.
- B. Minimize glare and obtrusive outdoor lighting.
- C. Conserve energy.

§ 102-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

FILTERING -- Covering for a lamp or other light source with a glass or acrylic translucent enclosure of the light source.

FULLY SHIELDED—Outdoor light fixtures shielded or constructed so that no direct light rays are emitted by the installed fixture which go beyond the property lines of the lot(s) on which the light source is located and the bulb cannot be seen from any other property.

INDOOR LIGHT—Illumination initiated, created or generated from the interior of a building or structure which is directed, reflected, filtered or otherwise from the interior to the exterior.

INSTALLED—The attachment, or assembly fixed in place, whether or not connected to a power source, of any outdoor light fixture.

LIGHTING FIXTURE -- An assembly of one or more lamps (bulbs), tubes, etc., in a device designed to hold them. The fixture may include a shielding or filtering cover.

OUTDOOR LIGHT FIXTURES -- Illuminating devices, lighting or reflective surfaces, lamps and similar devices, permanently installed or portable, used for illumination or advertisement. Such devices shall include, but are not limited to search, spot and flood lights.

PERSON -- Includes firms, companies, corporations, partnerships, associations, or any organizational entity as well as individuals.

SHIELDING -- A device that eliminates direct light rays (from a lamp or other light source) in one or more directions.

§ 102-3. General Provisions.

- A. All outdoor illuminating devices shall be installed in conformance with the provisions of this chapter and the applicable sign regulations.
- B. Lighting, indoor or outdoor, on all properties shall be arranged so as not to reflect or cause glare onto any other property.
- C. For the purpose of this chapter, the following persons shall be presumed to be in custody and control;
 - (1) An individual owner or owners where the premises are owner occupied.
 - (2) The tenant where the premises are leased.

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- (3) A manager or person in charge of the premises.

§ 102-4. Approved materials and methods of construction or installation/operation.

The provisions of this chapter are not intended to prevent the use of any design, material or method of installation or operation not specifically prescribed by this chapter, provided that any such alternative has been approved. The Building Official may approve any such proposed alternative, provided that:

- A. It provides at least approximate equivalence to the applicable specific requirements of this chapter.
- B. It is otherwise satisfactory and complies with the intent of this chapter.
- C. Outdoor light(s) are fully shielded and not higher than 30 feet above ground level if attached to a pole or above the bottom of the roofline if attached to a building.
- D. Outdoor lighting under canopies or overhangs are fully shielded and not higher than 30 feet from ground level.
- E. The highest part of any bulb or light fixture is used in determining whether light(s) meet the height limitations of this chapter.
- F. All exterior light(s) or lighting are to be locked in a fixed position.

§ 102-5. Shielding/Filtering required.

- A. All outdoor lighting fixtures shall have shielding as required by this chapter.
- B. Metal halide fixture lamp types shall be filtered.

§ 102-6. Submission of plans; evidence of compliance with regulations.

- A. Submission contents. The applicant for any permit required by any provision of the laws of this town in connection with proposed work involving outdoor light fixtures shall submit (as part of the application for permit) evidence that the proposed work will comply with this chapter. The submission shall contain but shall not necessarily be limited to the following, all or part of which may be part of or in addition to the information required elsewhere in the laws of this town upon application for the required permit:
 - (1) Plans indicating the location of all exterior lighting on the premises and the type of illuminating devices, fixtures, lamps, supports, reflectors and other devices.
 - (2) A description of the illuminating devices, fixtures, lamps, supports, reflectors and other devices, and the description may include, but is not limited to, catalog cuts by manufacturers and drawings (including sections if needed to make the application clear).
 - (3) Photometric data, such as that furnished by manufacturers, or similar material showing the angle of cut off or light emissions.
- B. Additional submission. The plans, descriptions and data required in this section shall be sufficiently complete to enable the Building Official to determine readily whether compliance with the requirements of the Code will be secured. If such plans, descriptions and data cannot enable this determination, by reason of the nature or configuration of the devices, fixtures or lamps proposed, the applicant shall additionally submit evidence of certified reports of tests showing compliance, provided that these tests shall have been performed and certified by a recognized testing laboratory.
- C. Lamp or fixture substitution. Should any outdoor light fixture be changed after the permit has been issued, a change request must be submitted to the Building Official for his or her approval, together with adequate information to assure compliance with the chapter, which must be received prior to substitution.

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§ 102-7. Prohibitions.

- A. Certain fixtures and lamps. The installation or use of any mercury vapor, low-pressure sodium, high-pressure sodium, metal halide, fluorescent, quartz or any incandescent lighting fixture or lamp greater than 160 watts which is not fully shielded as provided in the chapter.
- B. Laser source light.
- C. Searchlights.

§ 102-8. Restrictions on use.

The following apply to lamps (bulbs) with or without shielding or filtering and to lighting fixtures:

- A. Spotlights and floodlights shall be arranged so as not to directly illuminate structures on adjacent or other properties.
- B. Illumination by any device or combination of devices (including those cited in Subsection A above) that is/are located within a structure, attached to a house or other structures or located anywhere on a residential or commercial property shall not produce light intensity at any adjacent property boundary in excess of five (5) footcandles as measured by a light meter or similar device.
- C. Special attention shall be given to exposed light bulbs that are unprotected by filtering covers or shielding or not recessed into porch ceilings or roof overhangs. Such exposed light bulbs may cause glare even if all of the other provisions of this article are observed. If this occurs, corrective action, such as shielding or filtering, shall be taken.

§ 102-9. Temporary exemptions; exceptions.

- A. Request; renewal; information required. Any person may submit a written request, on a form prepared by the town, to the Building Official for a temporary exemption from the requirements of the chapter.
- B. Approval; duration. The Building Official shall have five business days from the date of submission of the request for temporary exemption to act, in writing, on the request. If approved, the exemption shall be valid for not more than 30 days from the date of issuance of the approval. The approval shall be renewable at the discretion of the Building Official upon a consideration of all the circumstances. Each such renewed exemption shall be valid for not more than 30 days.
- C. Disapproval; appeal. If the request for temporary exemption is disapproved, the person making the request may appeal to the Town Council pursuant to § 102-12.
- D. Excepted from this chapter is lighting provided by the Town of Fenwick Island, county or state governments and temporary emergency lighting provided by police, firemen, electric utility companies and other such organizations. When needed, the town may allow individual residents to provide temporary emergency lighting.
- E. Exterior holiday lights are exempt.

§ 102-10. Other exemptions.

Outdoor lighting fixtures installed prior to and operable on June 21, 1996 shall comply with the requirements of this chapter no later than July 31, 2016.

§ 102-11. Written notice of violation.

In the event any person shall be found in violation of any section of this chapter, he/she or it shall be given notice in writing, by certified mail, return receipt requested, with copy by the same method to the owner of the property if different from the person given notice. The owner shall correct the violation within 30 days of the mailing of such notice.

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§ 102-12. Appeals.

Any person aggrieved by any decision of the Building Official made in administration of this chapter has the right to appeal to the Town Council, within 15 days of receipt of notice, by giving written notice of his or her election to do so to the office of the Town Manager and upon payment of a fee as set by resolution of the Town Council from time to time; the Town Manager shall notify the Secretary of the Town Council and shall transmit to the Secretary all the papers constituting the record upon which the decision appealed from was taken. Town Council shall set a date, time and place for the hearing of the appeal, which time and date may be at a regular Town Council meeting or a special meeting of the Town Council, so long as the applicable notice and time requirements may be met. Notice of the appeal and scheduling of the appeal before Town Council shall be sent to the appellant at least 15 days prior to the hearing date. In the event of such an appeal, enforcement is stayed until a decision has been reached by Town Council. Any decision made by Town Council is final.

§ 102-13. Violations and penalties.

Any person found guilty of violating any of the provisions of this chapter shall, upon conviction thereof, be subject to a fine of \$100 as well as costs of prosecution and any court-imposed assessments. Each day that a person continues to violate the provisions of this chapter shall be deemed to be a separate offense.

§ 102-14. Applicability; severability.

- A. The provisions of this chapter are in addition to, and not in derogation of, the provisions of any other applicable laws governing lighting, including but not limited to the provisions of § 135-2H and I.
- B. The provisions of this chapter are severable. If any section, subsection, sentence, clause or phrase of this chapter or its application to any person or circumstance is held invalid by the decision of any court of competent jurisdiction, the remainder of this chapter is and shall remain in full force and effect.

TOWN OF FENWICK ISLAND Profit & Loss Budget vs. Actual

August 2009 through January 2010 TOTAL

	Jan 10	Aug '09 - Jan 10	Budget	\$ Over Budget	% of Budget
Income					
43000 · Taxes					
41020 · Property Taxes	807.55	620,265.01	625,000.00	-4,734.99	99.24%
42010 · Rental Receipt Tax	7,958.54	221,983.99	275,000.00	-53,016.01	80.72%
43000 · Taxes - Other	0.00	86.74			
Total 43000 · Taxes	8,766.09	842,335.74	900,000.00	-57,664.26	93.59%
44550 · Charges for Services - Admin					
43010 · License Fees - OC	5,300.00	31,601.00	35,000.00	-3,399.00	90.29%
43020 · License Fees - RU	2,400.00	18,414.00	22,500.00	-4,086.00	81.84%
43030 · License Fees - RM	5,341.36	19,778.84	25,000.00	-5,221.16	79.12%
44010 · Garbage Collection Fees	786.00	178,696.49	178,160.00	536.49	100.3%
44020 · Comcast Cable Fees	0.00	8,967.27	28,000.00	-19,032.73	32.03%
44030 · Ambulance Service Fee	66.00	26,763.00	27,120.00	-357.00	98.68%
45100 · Building Permit Fees	19,454.95	89,423.34	75,000.00	14,423.34	119.23%
Total 44550 · Charges for Services - Admin	33,348.31	373,643.94	390,780.00	-17,136.06	95.62%
44800 · Fines & Forfeitures					
46100 · Penalties	363.44	788.44	3,000.00	-2,211.56	26.28%
46200 · Traffic Fines	2,905.30	11,639.45	35,000.00	-23,360.55	33.26%
46300 · Parking Violation Fees	150.00	9,725.00	20,000.00	-10,275.00	48.63%
Total 44800 · Fines & Forfeitures	3,418.74	22,152.89	58,000.00	-35,847.11	38.2%
45000 · Investments					
45030 · Interest-Investments	0.00	715.85			
47100 · Interest Income	865.59	4,517.21	9,000.00	-4,482.79	50.19%
Total 45000 · Investments	865.59	5,233.06	9,000.00	-3,766.94	58.15%
46430 · Miscellaneous Revenue - Admin					
45320 · Contractor Decals	120.00	210.00			
45330 · Bonfire Permits	0.00	520.00	2,500.00	-1,980.00	20.8%
47120 · Town Hall Rental Fee	20.00	320.00	2,000.00	-1,680.00	16.0%
47150 · Photo/Audio Copy Fee	0.00	13.50	100.00	-86.50	13.5%
47200 · Parking Permits	0.00	5,945.00	25,000.00	-19,055.00	23.78%
47275 · Public Hearing Fee	0.00	275.00			
47300 · Miscellaneous Income	111.96	6,211.45	5,000.00	1,211.45	124.23%
47800 · Sale of Equipment	0.00	15,010.00			
48100 · Insurance Reimbursements	0.00	7,975.96	5,000.00	2,975.96	159.52%
48200 · Income for restricted purpose	0.00	769.66			
Total 46430 · Miscellaneous Revenue - Admin	251.96	37,250.57	39,600.00	-2,349.43	94.07%
46440 · Miscellaneous Revenue - Police					
47160 · Police Accident Report Fee	50.00	300.00	200.00	100.00	150.0%
47161 · Salary OT Reimbursement	800.00	800.00	7,000.00	-6,200.00	11.43%
Total 46440 · Miscellaneous Revenue - Police	850.00	1,100.00	7,200.00	-6,100.00	15.28%
47000 · Intergovernmental Rev Lifeguard					
47280 · State Beach Lifeguard Revenue	0.00	11,000.00	47,000.00	-36,000.00	23.4%
Total 47000 · Intergovernmental Rev Lifeguard	0.00	11,000.00	47,000.00	-36,000.00	23.4%
47050 · Intergovernmental Rev Police					
47285 · County Police Grant	0.00	15,000.00	12,500.00	2,500.00	120.0%
47900 · DEMA Homeland Security Grant	0.00	15,974.24			
Total 47050 · Intergovernmental Rev Police	0.00	30,974.24	12,500.00	18,474.24	247.79%
48050 · Concession franchise	0.00	0.00	20,000.00	-20,000.00	0.0%
48150 · Junior Lifeguard	0.00	0.00	2,500.00	-2,500.00	0.0%
Total Income	47,500.69	1,323,690.44	1,486,580.00	-162,889.56	89.04%
Expense					
61100 · POLICE DEPARTMENT					
61110 · Police Salaries	21,277.19	130,669.00	275,000.00	-144,331.00	47.52%
61140 · Police Life Insurance	69.75	552.04	1,400.00	-847.96	39.43%

TOWN OF FENWICK ISLAND

Profit & Loss Budget vs. Actual

August 2009 through January 2010 TOTAL

	Jan 10	Aug '09 - Jan 10	Budget	\$ Over Budget	% of Budget
61150 · Police Health Insurance	191.32	22,399.78	50,982.00	-28,582.22	43.94%
61160 · Police Payroll Taxes	2,180.93	10,892.12	24,700.00	-13,807.88	44.1%
61170 · Police Pension Expense					
61171 · Police - State Pension Payment	-5,528.97	-5,528.97	-36,000.00	30,471.03	15.36%
61170 · Police Pension Expense - Other	2,319.38	15,116.77	50,000.00	-34,883.23	30.23%
Total 61170 · Police Pension Expense	-3,209.59	9,587.80	14,000.00	-4,412.20	68.48%
61180 · Police Workers Compensation	4,538.00	4,538.00	23,600.00	-19,062.00	19.23%
61210 · Police Other Supplies	0.00	2,407.20	3,000.00	-592.80	80.24%
61220 · Police Office Supplies	231.12	1,607.06	5,000.00	-3,392.94	32.14%
61310 · Police Office Equip Maintenance	174.94	521.59	1,000.00	-478.41	52.16%
61320 · Police Printing & Advertising	0.00	193.69	2,000.00	-1,806.31	9.69%
61330 · Police Uniforms	183.91	1,457.23	4,000.00	-2,542.77	36.43%
61335 · Police Computers	120.03	1,161.18	5,000.00	-3,838.82	23.22%
61340 · Police Vehicle Maintenance	33.25	2,431.10	4,000.00	-1,568.90	60.78%
61345 · Police Gas & Oil	947.43	4,539.52	15,000.00	-10,460.48	30.26%
61370 · Police Vehicle Acquisition	0.00	33,822.00			
61380 · Police Training	0.00	594.75	3,000.00	-2,405.25	19.83%
61390 · Police Miscellaneous Expenses	0.00	54.05			
61410 · Police Capital Expenditures	0.00	799.90			
61100 · POLICE DEPARTMENT - Other	0.00	0.00			
Total 61100 · POLICE DEPARTMENT	26,738.28	228,228.01	431,682.00	-203,453.99	52.87%
61500 · LIFEGUARDS					
61510 · Lifeguard Salaries					
61515 · Lifeguard Salaries - State	0.00	21,272.56	59,290.00	-38,017.44	35.88%
61510 · Lifeguard Salaries - Other	1,582.40	47,242.06	100,960.00	-53,717.94	46.79%
Total 61510 · Lifeguard Salaries	1,582.40	68,514.62	160,250.00	-91,735.38	42.76%
61530 · Lifeguard Payroll Taxes					
61535 · Lifeguard Payroll Taxes State	0.00	1,868.78	4,140.00	-2,271.22	45.14%
61530 · Lifeguard Payroll Taxes - Other	162.16	4,103.54	6,860.00	-2,756.46	59.82%
Total 61530 · Lifeguard Payroll Taxes	162.16	5,972.32	11,000.00	-5,027.68	54.29%
61540 · Lifeguard Workmans Comp	2,475.00	2,475.00	8,500.00	-6,025.00	29.12%
61610 · Lifeguard Supplies & Equipment	0.00	0.00	3,000.00	-3,000.00	0.0%
61620 · Lifeguard Uniforms	0.00	60.00	4,000.00	-3,940.00	1.5%
61630 · Lifeguard Junior Guards	0.00	0.00	400.00	-400.00	0.0%
61640 · Lifeguard Chair & Sign Maint					
61750 · Lifeguard Chair & Sign - State	0.00	0.00			
61640 · Lifeguard Chair & Sign Maint - Other	118.13	160.23	500.00	-339.77	32.05%
Total 61640 · Lifeguard Chair & Sign Maint	118.13	160.23	500.00	-339.77	32.05%
61665 · Lifeguard Training	0.00	0.00	500.00	-500.00	0.0%
61670 · Lifeguard USLA Certification	0.00	0.00	900.00	-900.00	0.0%
61675 · Lifeguard Gasoline	0.00	93.64	200.00	-106.36	46.82%
61710 · Lifeguard Misc Expenses	0.00	266.00	500.00	-234.00	53.2%
Total 61500 · LIFEGUARDS	4,337.69	77,541.81	189,750.00	-112,208.19	40.87%
61800 · PUBLIC WORKS DEPARTMENT					
61830 · Public Works Life Insurance	96.75	427.77	800.00	-372.23	53.47%
61840 · Public Works Health Insurance	156.92	15,616.61	32,822.00	-17,205.39	47.58%
61850 · Public Works Payroll Taxes	1,155.72	6,186.10	15,750.00	-9,563.90	39.28%
61870 · Public Works Pension Expense	1,034.16	7,863.06	13,900.00	-6,036.94	56.57%
61880 · Public Works Workmans Comp Ins	2,158.00	2,158.00	12,185.00	-10,027.00	17.71%
61905 · Public Works Training	0.00	80.00	1,500.00	-1,420.00	5.33%
61910 · Public Works Office Supplies	0.00	0.00	250.00	-250.00	0.0%
61920 · Public Works Shop Supplies	26.32	401.55	1,500.00	-1,098.45	26.77%
61930 · Public Works Shop Equipment	0.00	405.92	2,500.00	-2,094.08	16.24%
61940 · Public Works Safety Equipment	0.00	188.33	500.00	-311.67	37.67%
62010 · Public Works Printing & Advert	0.00	0.00	200.00	-200.00	0.0%
62015 · Public Works Utilities	604.08	1,944.30	5,000.00	-3,055.70	38.89%
62020 · Public Works Bldg Maintenance	26.22	85.50	600.00	-514.50	14.25%
62025 · Public Works Uniforms	0.00	183.97	500.00	-316.03	36.79%

TOWN OF FENWICK ISLAND

Profit & Loss Budget vs. Actual

August 2009 through January 2010 TOTAL

	Jan 10	Aug '09 - Jan 10	Budget	\$ Over Budget	% of Budget
62030 · Public Works Gas & Oil	205.15	1,185.09	4,000.00	-2,814.91	29.63%
62035 · Public Works Repairs & Mainten	75.44	319.24	2,000.00	-1,680.76	15.96%
62075 · Public Works CDL Testing	72.00	369.00	500.00	-131.00	73.8%
62100 · Public Works Contract Services	0.00	140.90			
62120 · Public Works Capital ExpendIt	0.00	10,724.53			
Total 61800 · PUBLIC WORKS DEPARTMENT	5,610.76	48,279.87	94,507.00	-46,227.13	51.09%
61805 · PW Personnel Costs					
61810 · Public Works Salaries	11,275.21	74,107.02	150,000.00	-75,892.98	49.41%
Total 61805 · PW Personnel Costs	11,275.21	74,107.02	150,000.00	-75,892.98	49.41%
62200 · ADMINISTRATION					
62210 · Admin Salaries	11,912.93	78,474.74	157,500.00	-79,025.26	49.83%
62220 · Admin Life Insurance	76.50	412.86	600.00	-187.14	68.81%
62230 · Admin Health Insurance	155.31	21,429.38	45,344.00	-23,914.62	47.26%
62240 · Admin Payroll Taxes	1,221.09	6,604.64	15,900.00	-9,295.36	41.54%
62250 · Admin Pension Expense	576.22	4,337.90	8,500.00	-4,162.10	51.03%
62255 · Admin Workers Comp	283.00	283.00	12,700.00	-12,417.00	2.23%
62260 · Admin Financial Services	0.00	2,970.78	2,500.00	470.78	118.83%
62310 · Admin Office Equip Maintenance	378.36	4,289.13	6,000.00	-1,710.87	71.49%
62320 · Admin Office Supplies	264.71	2,005.57	5,000.00	-2,994.43	40.11%
62330 · Admin Travel Reimbursement	0.00	121.25	1,500.00	-1,378.75	8.08%
62332 · Admin Vehicle Acquisition	358.38	2,150.28	3,225.00	-1,074.72	66.68%
62334 · Admin Vehicle Fuel/Maint	55.76	281.22	2,000.00	-1,718.78	14.06%
62340 · Admin Printing & Advertising	0.00	751.75	100.00	651.75	751.75%
62350 · Admin Training	1,450.00	1,508.95	3,500.00	-1,991.05	43.11%
62360 · Admin Miscellaneous Expenses	0.00	152.58			
62370 · Admin Parking Permits	0.00	0.00	2,500.00	-2,500.00	0.0%
62410 · Admin Capital Expenditures	0.00	785.00			
Total 62200 · ADMINISTRATION	16,732.26	126,559.03	266,869.00	-140,309.97	47.42%
63200 · GENERAL GOVERNMENT					
63205 · Gen Gov Insurance	907.00	55,834.00	60,000.00	-4,166.00	93.06%
63210 · Gen Gov Telephone	670.31	4,146.17	7,500.00	-3,353.83	55.28%
63220 · Gen Gov Website	0.00	107.40	2,500.00	-2,392.60	4.3%
63225 · Gen Gov Legal	918.00	2,214.00	18,000.00	-15,786.00	12.3%
63230 · Gen Gov Audit	0.00	8,600.00	8,500.00	100.00	101.18%
63235 · Gen Gov Postage	786.07	1,391.77	3,000.00	-1,608.23	46.39%
63240 · Gen Gov Printing & Advertising	0.00	103.15	1,500.00	-1,396.85	6.88%
63245 · Gen Gov Utilities	1,924.64	6,664.96	14,000.00	-7,335.04	47.61%
63250 · Gen Gov Appraisal	0.00	0.00	5,500.00	-5,500.00	0.0%
63255 · Gen Gov Emergency Mgmt	0.00	0.00	500.00	-500.00	0.0%
63260 · Gen Gov Sewer	0.00	219.00	500.00	-281.00	43.8%
63265 · Gen Gov Dues	0.00	75.00	500.00	-425.00	15.0%
63270 · Gen Gov Service Grants	0.00	0.00	3,000.00	-3,000.00	0.0%
63271 · Gen Gov Recycling	2,463.64	15,113.97			
63272 · Gen Gov Building Maintenance	327.16	1,342.06	6,000.00	-4,657.94	22.37%
63273 · Gen Gov Cell Phones	0.00	1,829.88	5,000.00	-3,170.12	36.6%
63274 · Gen Gov Contract Services	140.00	1,681.91	3,800.00	-2,118.09	44.26%
63275 · Gen Gov County Fee Tax Billing	0.00	0.00	800.00	-800.00	0.0%
63280 · Gen Gov Misc & Contingencies	73.70	480.95	5,000.00	-4,519.05	9.62%
63281 · Gen Gov Employee Relations	428.94	1,993.72	3,000.00	-1,006.28	66.46%
63285 · Gen Gov Codification	0.00	0.00	5,000.00	-5,000.00	0.0%
63290 · Gen Gov Pension Administration	902.81	3,528.03	1,500.00	2,028.03	235.2%
63300 · Gen Gov Government Liaison	9.00	869.60	2,000.00	-1,130.40	43.48%
63305 · Gen Gov Median Maintenance	0.00	178.80			
63310 · Gen Gov Community Projects	105.56	438.47	1,000.00	-561.53	43.85%
63320 · Gen Gov Community Outreach	0.00	264.42	1,000.00	-735.58	26.44%
63325 · Gen Govt Ambulance Service	0.00	12,150.00	27,120.00	-14,970.00	44.8%
63330 · Gen Govt Trash Collection	10,044.75	62,018.58	167,552.00	-105,533.42	37.02%
63410 · Gen Gov Capital Expenditures	0.00	15,974.24			
Total 63200 · GENERAL GOVERNMENT	19,701.58	197,220.08	353,772.00	-156,551.92	55.75%
66000 · Payroll Expenses	14.69	14.69			

TOWN OF FENWICK ISLAND

Profit & Loss Budget vs. Actual

August 2009 through January 2010 TOTAL

	Jan 10	Aug '09 - Jan 10	Budget	\$ Over Budget	% of Budget
66900 - Reconciliation Discrepancies	0.00	2,044.29			
Total Expense	84,410.47	753,994.80	1,486,580.00	-732,585.20	50.72%
	-36,909.78	569,695.64	0.00	569,695.64	100.0%
	-36,909.78	569,695.64	0.00	569,695.64	100.0%

TOWN OF FENWICK ISLAND
MONTHLY RECONCILIATION OF ACCOUNTS
PERIOD ENDING JANUARY 31, 2010

Company	Account	Beginning Balance	Ending Balance
Town of Fenwick Island		980,514.35	943,746.34
	General Fund Checking	27,292.09	77,625.91
	General Fund Savings	614,550.65	530,465.84
	General Fund Savings DELGIP	330,882.06	330,897.79
	Payroll Fund	7,589.55	4,556.80
	Petty Cash	200.00	200.00
Municipal Street Aid		2,344.12	1,189.96
	Checking	170.80	80.52
	Savings	2,173.32	1,109.44
Law Enforcement Grants		2,658.14	2,658.16
	SALLE (State Aid to Local)	3.28	3.28
	EDIE (Drug Enforcement)	2,498.64	2,498.64
	SLEAF	30.00	30.00
	Criminal Justice Block Grant	126.22	126.24
Reserve Accounts			
Parks & Recreation		2,519.08	2,497.17
Beach Replenishment		35,362.16	35,363.81
Compensated Absence		18,549.71	18,549.71
Realty Transfer Funds		1,716,477.69	1,752,677.27
	Wilmington Trust Reserve	315,399.06	315,414.03
	Wilmington Trust Non-Reserve	567,927.32	567,954.30
	PNC Realty transfer	127,850.99	163,476.84
	PNC 13 month CD	177,256.73	177,524.98
	Sussex County FCU CD	349,321.20	349,321.20
	Edward Jones	10,297.84	10,561.37
	Flushing Savings CD	84,710.15	84,710.15
	Discover Bank CD	83,714.40	83,714.40

TOWN OF FENWICK ISLAND
2009-10 REALTY TRANSFER TAX FUND

<u>MONTH</u>	<u>STARTING BALANCE</u>	<u>TAXES COLLECTED</u>	<u>INTEREST</u>	<u>TRANSFERS IN</u>	<u>TRANSFERS OUT</u>	<u>ENDING BALANCE</u>
August '09	1,670,724	0	985	0	-653	1,671,030
September '09	1,671,030	0	994	0	-631	1,671,393
October '09	1,671,393	7800	2,530	0	-653	1,681,070
November '09	1,681,070	0	1043	0	-631	1,681,482
December '09	1,681,482	33,450	2,174	0	-653	1,716,453
January '10	1,716,453	35,550	1302	0	-652	1,752,653

**TOWN OF FENWICK ISLAND
BUILDING REPORT
JANUARY 2010**

PERMIT #	PROPERTY DESCRIPTION	PROJECT DESCRIPTION	E.C.C.	TOTAL
3833	Twins Enterprises T. Frank 2 E. Houston Street Lot 16 1-34 23.12 198.00	12'x20' enclosure under house, install rain gutters	\$10,000.00	\$300.00
3834	Beachwood, Inc. R. Benn 1306 Bunting Avenue Lots (1/2) 12 & 13 1-34 23.12 201.00	New media room, screened porch and deck	\$125,000.00	\$3,750.00
3835	Atlantic Elevator G. Godfrey 911 McWilliams Street Lot 410 1-34 23.16 38.00	Install exterior chairlift	\$5,000.00	\$150.00
3836	R. Woody Home Imp. J. Small 45 W. Dagsboro Street Lot 444 1-34 23.16 8.00	Re-shingle roof	\$3,470.00	\$104.00
3837	J. Tomlinson E. Wenrich 9 W. West Virginia Ave. Lot 134 1-34 23.16 116.00	Re-shingle roof	\$3,000.00	\$90.00
3838	Marnie Properties, Inc. L. Kulin 40 W. Farmington St. Ext. Lots 530 & 531 1-34 23.12 28.00	3-Bedroom, 4-bath single family dwelling w/attached garage	\$450,000.00	\$13,500.00
3839	Beachwood, Inc. R. Benn 1306 Bunting Avenue Lots (1/2) 12 & 13 1-34 23.12 201.00	Install (6) 3/4"x180' geothermal loops	\$28,000.00	\$100.00
3840	Lloyd Saunders Roofing S. Lewis 17 W. Atlantic St. Lot 67 1-34 23.16 116.00	Re-shingle portion of roof	\$2,215.00	\$66.45
3841	Double Diamond Bldrs. J. Haring 14 W. Indian Street Lot 127 1-34 23.12 142.00	Install propane fireplace	\$3833.00	\$115.00
3842	S. Groahe 25 W. Atlantic Street Lot 63 1-34 23.16 120.00	Demolish boathouse	\$1,000.00	\$50.00
3843	Village Developers E. Davis 1 W. James Street Lot 93 1-34 23.12 160.00	Re-shingle roof	\$5,150.00	\$154.50

3844	D. McCoy 19 W. Farmington St. Lot 200 1-34 23.12 86.00	4' x 90' vinyl fence	\$1,250.00	\$37.50
3845	L. Hionis 21 W. Farmington St. Lot 201 1-34 23.12 85.00	4' x 90' vinyl fence	\$1,250.00	\$37.50
3846	Bayshore Marine L. Kulin 40 W. Farmington St. Lots 530/531 1-34 23.12 28.00	135' wooden bulkhead & 195' vinyl bulkhead	\$33,500.00	\$1,005.00
		TOTAL	\$672,668.00	\$19,459.95

PUBLIC WORKS DEPARTMENT REPORT
January 13, 2010 to February 11, 2010

The following activities have been performed by the Public Works Department for this time period.

- Drainage, shoulder, sign, and post work was performed throughout this time frame.
- Routine maintenance of buildings, equipment, park, grounds, right of way, and median was performed during this time frame.
- Street and town parking lot clean ups after several heavy snows and weather events.
- Maintenance and painting on highway holiday lights.
- Maintenance on lawn mowers, weed eaters, and blowers.
- Measure beach sand.
- Replace two tops on town sign, in garden, town hall parking lot.
- Make and paint metal piece for police car.
- Maintenance of barricades and painting.
- Maintenance and repairs on 13 lifeguard stands.
- Install one brick in park walkway.
- Sit up hall for women's club luncheon.
- Win Abbott, Charlie Smith, and Jim Purnell attended a 4 hour workshop at Rehoboth Beach Convention Center on streets, sidewalks, and ADA 2-3-10
- Safety meeting was held on 2-5-10 foul weather driving and general truck safety

Respectfully submitted,
Wilmer E. Abbott IV
Town Manager

FENWICK ISLAND POLICE DEPARTMENT

MEMORANDUM

TO: PRESIDENT
COUNCIL MEMBERS
CITIZENS

FROM: Chief William Boyden

DATE: February 16, 2010

SUBJECT: MONTHLY REPORT

Here is the January monthly report for your review and approval:

	2010	2009
Traffic Arrests/Citations	94	66
Total Number of Complaints	28	27
DUI Arrests	1	2
Criminal Arrests	3	4
Parking Tickets	0	2
Time Assisting DE State Police	6.5	N/A
Time assisting other agencies	2.0	N/A

TO: Fenwick Island Town Council
FROM: Winnie Lewis, Chair , Planning Commission

- Neither the Cultural and Historic Preservation Sub-committee nor the Planning Commission met in the month of February due to inclement weather. Tentative date for next meeting is March 9, 2010 @ 1:30 and 2:30 respectively.

Respectfully Submitted,

Winnie Lewis
WL/adip

PROPOSED:

Chapter 77, DISORDERLY CONDUCT

§ 77-1. Definitions; Word Usage.

For the purposes of this Chapter, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory.

TOWN - The Town of Fenwick Island, Delaware, with administrative offices at 800 Coastal Highway, Fenwick Island, Delaware 19944.

EMERGENCY - An unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, natural disaster or automobile accident or any situation requiring immediate action to prevent serious bodily injury or loss of life.

JUVENILE OR MINOR - Any unemancipated person under the age of 18 or, in equivalent phrasing often herein employed, any person 17 or less years of age.

PARENT - Any person having legal custody of a juvenile as a natural or adoptive parent, as a legal guardian, as a person who stands in loco parentis or as a person to whom legal custody has been given by court order.

PERSON -- Includes firms, companies, corporations, partnerships, associations or any organization entity as well as individuals.

PUBLIC PLACE - Any place to which the public or a substantial group of the public has access and includes, but is not limited to, the public beach, jetties, wharfs, docks, boardwalk, streets, alleys, sidewalks, parking lots, common areas of churches and condominiums, restaurants, shops, cafes, arcades and similar areas that are open to the use of the public. As a type of "public place," a street is a way or place, of whatever nature, open to the use of the public as a matter of right for purposes of vehicular travel or for pedestrian travel. "Street" includes that legal right-of-way, including but not limited to the cartway of traffic lanes, the curb, the sidewalks, whether paved or unpaved, and any grass plots or other grounds found within the legal right-of-way of a street.

REMAIN - To loiter, idle, wander, stroll, play, stay behind, tarry or stay unnecessarily in a public place, including the congregating of groups (or of interacting minors) totaling four or more persons in which any juvenile involved would not be using the streets for ordinary or serious purposes such as mere passage or going home, or to fail to leave the premises of an establishment when requested to do so by a police officer or the operator of an establishment. To implement this provision with additional precision and precaution, numerous exceptions are expressly defined in this Chapter.

TIME OF NIGHT - As referred to herein is based upon the prevailing standard of time, whether Eastern Standard Time or Eastern Daylight Saving Time, generally observed at that hour by the public in the Town.

YEARS OF AGE - Continues from one birthday, such as the seventeenth to (but not including the day of) the next, such as the eighteenth birthday, making it clear that 17 or less years of age is herein treated as equivalent to phrase "under 18 years of age."

ARTICLE I
Exposure in Public

§ 77-2. Urinating in public.

No person shall urinate or defecate in any public place or in any place on private property not designed for the disposal of human waste in the Town of Fenwick Island, Delaware.

§ 77-3. Disrobing in public.

No person shall disrobe or change his clothing from bathing suit to street clothes or otherwise in any motor vehicle, in any public place or in any place not enclosed from the view of others in the Town of Fenwick Island, Delaware.

§ 77-4. Engaging in sexual acts in public.

No person shall engage in sexual intercourse or any immoral acts in any motor vehicle in any public place or in any place not enclosed from the view of others in the Town of Fenwick Island, Delaware.

§ 77-5. Violations and penalties.

Any person found guilty of violating any of the provisions of this Article shall, upon conviction thereof, be subject to a fine of \$200. Each day that a person continues to violate the provisions of this Article shall be deemed a separate offense.

ARTICLE II
Disorderly Conduct

§ 77-6. A person may be found guilty of disorderly conduct when:

- A. The behavior intentionally causes public inconvenience, annoyance or alarm to any other person or creates a risk thereof by:
 - (1) Engaging in fighting or in violent, tumultuous or threatening behavior;
 - (2) Making an unreasonable noise or an offensively coarse utterance, gesture or display or addressing abusive language to any person present;
 - (3) Disturbing any lawful assembly or meeting of persons without lawful authority;
 - (4) Obstructing vehicular or pedestrian traffic;
 - (5) Congregating with other persons in a public place and refusing to comply with a lawful order of the police to disperse;
 - (6) Creating a hazardous or physically offensive condition which serves no legitimate purpose;
or
 - (7) Congregating with other persons in a public place while wearing masks, hoods or other garments rendering their faces unrecognizable, for the purpose of and in a manner likely to imminently subject any person to the deprivation of any rights, privileges or immunities secured by the Constitution or laws of the United States of America.

- B. The behavior results in a course of disorderly conduct, as defined in Subsection A of this section, which is likely to cause substantial harm or serious inconvenience, annoyance or alarm and refuses or knowingly fails to obey an order to disperse made by a police officer to the participants.

§ 77.7. Violations and Penalties

Any person found guilty of violating any of the provisions of this Article shall, upon conviction thereof, be subject to a fine of \$200. Each day that a person continues to violate the provisions of this Article shall be deemed a separate offense.

ARTICLE III
Disorderly Dwelling Units

§ 77.8. Findings; purpose.

- A. The Town Council has determined that at various times, particularly during the late spring and summer, the occupants or users of some dwelling units in the Town of Fenwick Island use those dwelling units for the purpose of engaging in disorderly and disruptive conduct, loud and disturbing noises, public intoxication and other violent and tumultuous behavior. The Town Council has also determined that a number of persons in legal possession of dwelling units in the Town of Fenwick Island are engaging in the practice of allowing such dwelling units, designed for occupancy by essentially single families, to be occupied or used by groups of persons, frequently but not necessarily comprised of minors with insufficient adult supervision. The Town Council has further determined that these practices encourage incidents of disorderly conduct, loud and disturbing noises, public intoxication, violent and tumultuous behavior, disturbing the peace and other similar acts which are detrimental to the public health, safety, peace and welfare of the Town.
- B. The Town Council has further determined that the persons entitled to lawful possession of such premises who fail to take appropriate measures to prevent recurrences of such incidents after due notice of previous disturbances by persons occupying or using the premises must be held responsible for allowing such conduct to occur on those premises.
- C. It is, therefore, declared to be the purpose and intent of this Article to prohibit the use of dwelling units in the Town of Fenwick Island for disorderly and other disruptive conduct by imposing civil penalties not only upon the occupants and/or users of such premises but also by imposing civil penalties on those persons in possession of any premises in the Town who, after notice of a previous conviction for conduct proscribed by this Article, fail to take appropriate actions to prevent a subsequent violation.

§ 77.9. Unlawful acts by occupants and/or users.

Any person occupying or present on a premises who by himself or in concert with other occupants and/or users causes public inconvenience, annoyance or alarm to any other person or persons or who creates an unreasonable risk thereof by engaging in or causing any of the following conduct shall be violating this article:

- A. Making, creating or permitting any unreasonably loud, disturbing and unnecessary noise or making, creating or permitting any noise of such character, intensity or duration as to be detrimental to the life, health and welfare of any person or which disturbs, injures or endangers the comfort, repose, peace or safety of any individual. By way of example and not in limitation, the following shall be deemed to be unreasonably loud, disturbing and unnecessary noises:

(1) Playing any radio, phonograph, tape deck or musical instrument in such a manner or at such a volume, particularly between the hours of 12:00 a.m. and 8:00 a.m., as to annoy or disturb the quiet, comfort or repose of any person in any other dwelling unit, apartment or commercial lodging room.

(2) The blowing of any horn, whistle or signal device, except as a danger signal, for an unreasonable and unnecessary period of time.

(3) Yelling, shouting or singing at such volume as to be plainly and disturbingly audible to the human ear outside the premises.

§ 77.10. Unlawful acts by persons entitled to lawful possession.

A. Any person(s) entitled to lawful possession who, after notice as herein provided, allows, permits or fails to take affirmative action to prevent repeated violations of this Article shall be deemed to be promoting the use of a dwelling unit for disorderly or other disruptive conduct in violation of this Article.

B. A person(s) in lawful possession shall be presumed to have allowed, permitted or failed to take affirmative action to prevent repeated violations of this Article where a violation of § 77-9 of this Article occurs after such person entitled to lawful possession has, within the past three months, previously been provided actual notice by the Fenwick Island Police Department of a previous conviction for conduct proscribed by § 77-9 of this Article.

C. "Actual notice," as used in Subsection B, shall mean verbal or written notice to one or more of the person(s) entitled to legal possession. If written notice is attempted, it shall be deemed effective by mailing a written notice thereof to the person entitled to lawful possession at his or her last known mailing address by certified mail, return receipt requested, with proper postage affixed. If such notice comes back undelivered (except refused), the Town shall exercise reasonable efforts to provide actual notice by some other means.

D. In the case of a single-family residential property subject to a rental license, oral and written notice of each such violation shall be given to the recorded license holder and his/her realtor within five business days. The license may be revoked if there have been three oral and written notices during a calendar year of violation of §77-9 of this chapter. Such license revocation may be immediate, or deferred to the entire rental season for the following year, or both.

§ 77.11. Violations and Penalties

Any person found guilty of violating any of the provisions of this Article shall, upon conviction thereof, be subject to a fine of \$200. Each day that a person continues to violate the provisions of this Article shall be deemed a separate offense.

ARTICLE IV
Juvenile Curfew

§ 77.12. Policy.

It shall be unlawful for any person 17 years or less of age (under 18) to be or remain in or upon a public place within the Town of Fenwick Island during the period beginning at 1:00 a.m. and ending at 5:00 a.m.

§ 77.13. Exceptions.

The following shall constitute valid exceptions to the operation of this Article:

- A. Accompanied by parent. When a juvenile is accompanied by a parent of such juvenile.
- B. Accompanied by authorized adult. When a juvenile is accompanied by an adult authorized by a parent of such juvenile to take said parent's place in accompanying said juvenile for a designated period of time and purpose within a specified area.
- C. Errand directed by parent. When the juvenile is on an errand as directed by his/her parent.
- D. Emergency. When a juvenile is involved in or assisting in an emergency, including, by way of example and not in limitation, responding as a member of a volunteer fire company to a fire company or paramedic call.
- E. First Amendment rights. When a juvenile is exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly.
- F. Reasonable necessity. In case of reasonable necessity for the juvenile remaining in a public place but only after the juvenile's parent has communicated to the Chief of Police or the person designated by the Chief of Police to receive such notifications the facts establishing the reasonable necessity relating to a specified public place at a designated time for a described purpose, including points of origin and destination. A copy of the communication, or of the police record thereof, duly certified by the Chief of Police to be correct, with an appropriate notation of the time it was received and of the names and addresses of the parent and juvenile shall be admissible evidence.
- G. On own or neighbor's property. When a juvenile is on the sidewalk or property where the juvenile resides or on either side of or across the street from the place where the juvenile resides and the adult owner or resident of that property has given permission for the juvenile to be there.
- H. Attending and returning home within one hour of official activity. When a juvenile is attending or is returning home by a direct route (without any unnecessary stop or detour) from and within one hour of any religious, recreational or other organized activity supervised by adults, sponsored by the Town, a recognized charitable, benevolent or civic association or a similar entity that takes responsibility for the minor.
- I. Employment necessity. When the juvenile is legally employed, going to or returning home from employment.
- J. Interstate or intrastate travel. When the juvenile is, with parental consent, in a motor vehicle, engaged in normal interstate or intrastate travel through the Town or originating or terminating in the Town.
- K. Married. When the juvenile is married or has been married pursuant to state law.

§ 77.14. Town responsibility limited; parental responsibilities.

- A. The foregoing exceptions to the operation of this Article shall act only to create a waiver of enforcement and affirmative defense(s) to such enforcement. By authorizing such exceptions, neither the Town nor any member of the Police Department shall assume any affirmative obligation or duty to supervise the well-being of any juvenile acting pursuant to such authorized exception.
- B. It shall be unlawful for a parent having legal custody of a juvenile knowingly to permit or by inefficient control to allow the juvenile to remain in any Town public place under circumstances not constituting an exception to, or otherwise beyond the scope of, this Article. The term "knowingly" includes knowledge that a parent should reasonably be expected to have concerning the whereabouts of a juvenile in that parent's legal custody. This requirement is intended to hold a neglectful or careless parent up to a reasonable community standard of parental responsibility through an objective test. It shall, therefore, be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such juvenile.
- C. It shall be unlawful for any parent to "knowingly" (as defined by this Chapter) provide any false authorization, information or certification, written or verbal, to the Town Police Department in order to obtain an exception to the operation of this Article under § 77-12 hereof.

§ 77.15. Enforcement procedures.

- A. If a police officer reasonably believes that a juvenile is in a public place in violation of this Article, the officer shall require the juvenile to provide his or her name, address and telephone number and how to contact his or her parent or guardian. No juvenile shall be issued a citation or taken into custody for a violation of this Article unless the police officer first affords that minor an opportunity to explain his or her conduct. In determining the age of the juvenile and in the absence of convincing evidence such as a birth certificate or driver's license, a police officer shall use his or her best judgment in determining age.
- B. If the police officer reasonably concludes that the juvenile is in violation of this Article, the officer may, depending upon the circumstances (e.g., age of the juvenile, hour of night, juvenile's means of transportation, juvenile's physical condition and whether parents could be reached) take the juvenile into custody pursuant to 10 Del. C. § 1004 or issue the juvenile a citation charging him or her with a violation of this Article and order the juvenile to go promptly home. If the juvenile is issued a citation, the Chief of Police shall send the parent or guardian of the juvenile written notice of the violation as set out in Subsection E hereof.
- C. Notwithstanding § 77-15 B of this Article, when a police officer has reasonable grounds to believe that the juvenile has engaged in delinquent conduct, the procedure shall then be to take the juvenile to the police station, where a parent or guardian shall immediately be notified to come for the juvenile, whereupon the parent or guardian and the juvenile shall be questioned. This is intended to permit ascertainment, under constitutional safeguards, of relevant facts and to centralize responsibility in the person designated there and then on duty for accurate, effective, fair, impartial and uniform enforcement and recording, thus making available experienced personnel and access to information and records.
- D. When a parent or guardian, immediately called, has come to take charge of the juvenile, and the appropriate information has been recorded, the juvenile shall be released to the custody of such parent. If the parent cannot be located or fails to take charge of the juvenile, then the juvenile shall be released to the juvenile authorities, except to the extent that in accordance with police regulations, approved in advance by juvenile authorities, the juvenile may temporarily be entrusted to an adult, neighbor or other person who will on behalf of a parent or guardian assume the responsibility of caring for the juvenile pending the availability or arrival of a parent or guardian.
- E. In the case of a first violation of this Article by a juvenile, the Chief of Police shall cause notice to be given to the parent of such minor. Such notice shall be given by either personal delivery thereof to the parent or by deposit of such notice in the United States mail in an envelope with postage prepaid addressed to such parent at his or her address as shown by records of the Police Department, including information obtained from the appropriate State records and/or any other identifying means. The giving of notice by mail is complete upon the expiration of four days after such deposit of such notice. Proof of the giving of notice by personal delivery or by mail may be made by the certificate of any officer or employee of the Police Department or by affidavit of any person over the age of 18 years naming the person to whom such notice was given and specifying the time, place and manner of the giving of such notice. Such notice shall contain a warning that any subsequent violation of this Article by the minor will result in full enforcement of this Article, including enforcement of parental responsibility and of applicable penalties.

§ 77.16. Violations and penalties.

A. Parents.

- (1) If, after the warning notice given pursuant to § 77-15 of a first violation by a juvenile, a parent violates § 77-12 (in connection with a second violation by the juvenile), this shall be treated as a first offense by the parent. Any parent convicted of violating § 77-13 shall pay a fine of \$200.
- (2) The parent or legal guardian having custody of a juvenile subject to this Article shall be liable for all costs incurred by the Town for providing personnel to remain in the company of a juvenile who has been detained as a curfew violator if the parent or guardian does not pick up the juvenile within one hour after receiving notice from the Town that the Town is detaining

the juvenile for a curfew violation. The amount to be paid by the parent or guardian shall be based on the hourly wage of the Town employee who is assigned to remain with the juvenile, plus the cost of benefits for that employee.

- (3) The parent or legal guardian having custody of a juvenile subject to this Article shall be liable for any fine or condition of restitution or reparation imposed by a court upon a curfew violator, provided that the curfew violator has not paid the fine or made restitution or reparation within the time ordered by the court, and further provided that the parent or legal guardian has been made a party defendant in all enforcement proceedings against the curfew violator and shall be served with all citations, summons, complaints, notices and other documents required to be served on the curfew violator defendant.

- B. False certification. Any parent convicted of knowingly providing any false authorization, information or certification, written or verbal, to the Town Police Department in violation of § 77-12 shall pay a fine of \$200.

§ 77.17. Enforceability.

The Council intends that this Article be held inapplicable in such cases, if any, where its application would be unconstitutional under the Constitution of the State of Delaware or the Constitution of the United States of America.

Chapter 107, NOISE -

§ 107-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

AIRCRAFT -- Vehicles or devices that are used to travel in air above the surface of the earth and include any devices attached, suspended or towed. Also included are remote-controlled aircraft.

MOTORBOAT -- Any vessel that operates on water and is propelled by machinery, including but not limited to powerboats, motorboats and personal watercraft (PWC).

MOTOR VEHICLES -- Vehicles self-propelled or drawn by any mechanical equipment which are capable of emitting noise.

NOISE DISTURBANCE -- Any sound which endangers or injures the safety or health of humans or animals, or annoys or disturbs a reasonable person of normal sensitivities, or jeopardizes the value of property and erodes the integrity of the environment.

PASSES OF MOTOR BOATS OR AIRCRAFT IN PROXIMITY TO FENWICK ISLAND, DE (THE TOWN) -- This term means the driving or piloting of such vehicles through, over or outside of the Town or Town-patrolled beach properties, but close enough so that sounds emanating from such vehicles can be heard by people in the town or on its patrolled beaches. A pass can be from one end of the Town to the other end or a portion thereof.

PERSON -- Includes firms, companies, corporations, partnerships, associations or any organization entity as well as individuals.

TOWN-PATROLLED BEACH -- The sandy beach area east of the eastern boundary of private and public property to the ocean water and the portion of ocean normally used by swimmers. (The areas observed and patrolled by Fenwick beach guards, as provided by the State of Delaware.)

§ 107-2. General prohibitions.

The following acts are deemed to be a noise disturbance:

A. Making, creating or permitting any unreasonably loud, disturbing and unnecessary noise or making, creating or permitting any noise of such character, intensity or duration as to be detrimental to the life, health and welfare of any person or which disturbs, injures or endangers the comfort, repose, peace or safety of any individual. By way of example and not in limitation, the following shall be deemed to be unreasonably loud, disturbing and unnecessary noises:

(1) Playing any radio, phonograph, tape deck or musical instrument in such a manner or at such a volume, particularly between the hours of 12:00 a.m. and 8:00 a.m., as to annoy or disturb the quiet, comfort or repose of any person in any other dwelling unit, apartment or commercial lodging room.

(2) The blowing of any horn, whistle or signal device, except as a danger signal, for an unreasonable and unnecessary period of time.

(3) Yelling, shouting or singing at such volume as to be plainly and disturbingly audible to the human ear outside the premises.

§ 107-3. Noise suppression devices.

A. No person shall cause, suffer or allow or permit the removal, disconnection or disabling of any noise suppression device or system which has been installed on any noise source pursuant to any of the following:

- (1) Pursuant to any federal or state law or regulation.
- (2) As a requirement for obtaining a permit to construct, modify or install such noise source.

B. No person shall defeat the designed purpose of any noise suppression system or device by installing any part or component which does not meet the minimum designed specifications for that system or device.

C. This section does not apply to licensed motor vehicles, motorboats or aircraft used exclusively for emergency purposes.

§ 107-4. Noise disturbance levels.

A. Any motorboat or aircraft that makes a pass or passes in proximity to the Town will be in violation of this chapter if any single pass causes a noise disturbance.

B. Music or other sounds made by a radio, tape player, CD player or other such electronic device in or on a motor vehicle is a noise disturbance if heard by a person 25 feet or more from the motor vehicle.

§ 107-5. Fixed external mechanical equipment.

Such equipment will be in violation of this Chapter only when not functioning in accordance with manufacturing specifications and when not in proper working order. Any complaints of the sound emanating from a fixed external mechanical equipment shall be accompanied by documentation supplied by an independent certified source.

§ 107-6. Exceptions.

Exempted from these regulations are:

A. Recreational, sports and musical activities. Noise created by the use of property for the purpose of recreational, sports or musical activities, provided that such exemption is authorized by the Town prior to the activity requested.

B. Emergencies. Noise created as a result of or related to an emergency, including the emission of sound for the purpose of alerting persons to the existence of an emergency and the emission of sound in the performance of emergency work.

C. Public celebrations. Patriotic or public celebrations as authorized by the Town or other government entity empowered to sanction such activity.

D. Productive activities; activities for residential use or for the health, safety and welfare of the community. Unavoidable noises created by activities such as personal home repairs or construction, gardening, grass cutting, power cleaning and aerial pesticide spraying are permitted between the hours of 8:00 a.m. and 8:00 p.m.,

provided that reasonable efforts are made to minimize such noise and the activities do not violate any Town ordinances or State or Federal laws.

E. Special exemptions may be granted by the Town prior to the activity requested.

§ 107-7. Violations and penalties.

A. Any person found guilty of violating any of the provisions of this chapter shall, upon conviction thereof, be subject to a fine of \$200. Each day that a person continues to violate the provisions of this chapter shall be deemed to be a separate offense.

B. In addition to the criminal penalties hereinbefore described, if any person violates any provision of this chapter and/or commits noise disturbance and/or causes or allows noise in prohibited levels to emanate from a source property under his/her ownership or control, the Town may institute an action for injunctive relief against such person to prohibit or prevent such violation.

C. In the case of a single-family residential property subject to a rental license, oral and written notice of each such violation shall be given to the recorded license holder and his/her realtor within five business days. The license may be revoked if there have been three oral and written notices during a calendar year of violation of §77-9 of this chapter. Such license revocation may be immediate, or deferred to the entire rental season for the following year, or both.

D. In addition, The Town Council may institute appropriate proceedings to restrain or enjoin further construction in violation of the chapter and/or proceedings to abate any violation, and to require the removal of the violation. In this event, the Town Council shall be entitled to collect from the offending party or parties, the Town's reasonable attorneys fees, legal costs and expenses and court costs, as a part of any judgment or award in a civil action brought to restrain or enjoin a violation. Civil remedies are in addition to and not in lieu of the penalties provided herein.

Chapter 95, HAZARDOUS MATERIALS

EXISTING:

§ 95-1. Definitions.

A. For use herein, this chapter adopts the definitions of "hazardous material," "hazardous substance" and "hazardous waste" as used by the United States Department of Transportation as more fully set forth in CFR 171.8. Items included within the definition of "hazardous material," "hazardous substance" and "hazardous waste" are listed in the Hazardous Material Table and CERCLA List as defined by the United States Department of Transportation and found in 49 CFR 172.101.

B. As used herein, "hazardous material" includes hazardous material, hazardous substance and hazardous waste.

§ 95-2. Applicable transportation law.

All federal, state and county regulations concerning the transport of any hazardous material shall be applicable at all times on all streets, roadways, alleys, real estate and waterways in the Town of Fenwick Island.

PROPOSED:

Chapter 95, HAZARDOUS MATERIALS AND STORAGE

§ 95-2. Applicable transportation law.

All federal, state and county regulations concerning the transport and storage of any hazardous material shall be applicable at all times on all streets, roadways, alleys, real estate and waterways in the Town of Fenwick Island.

Chapter 102 – Lighting

§ 102-1. Purpose.

The purpose of this chapter regulating lighting is as follows:

- A. Permit reasonable uses of outdoor lighting for nighttime safety, utility, security and enjoyment.
- B. Minimize glare and obtrusive outdoor lighting.
- C. Conserve energy.

§ 102-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

FILTERING -- Covering for a lamp or other light source with a glass or acrylic translucent enclosure of the light source.

FULLY SHIELDED—Outdoor light fixtures shielded or constructed so that no direct light rays are emitted by the installed fixture which go beyond the property lines of the lot(s) on which the light source is located and the bulb cannot be seen from any other property.

INDOOR LIGHT—Illumination initiated, created or generated from the interior of a building or structure which is directed, reflected, filtered or otherwise from the interior to the exterior.

INSTALLED—The attachment, or assembly fixed in place, whether or not connected to a power source, of any outdoor light fixture.

LIGHTING FIXTURE -- An assembly of one or more lamps (bulbs), tubes, etc., in a device designed to hold them. The fixture may include a shielding or filtering cover.

OUTDOOR LIGHT FIXTURES -- Illuminating devices, lighting or reflective surfaces, lamps and similar devices, permanently installed or portable, used for illumination or advertisement. Such devices shall include, but are not limited to search, spot and flood lights.

PERSON -- Includes firms, companies, corporations, partnerships, associations, or any organizational entity as well as individuals.

SHIELDING -- A device that eliminates direct light rays (from a lamp or other light source) in one or more directions.

§ 102-3. General Provisions.

- A. All outdoor illuminating devices shall be installed in conformance with the provisions of this chapter and the applicable sign regulations.
- B. Lighting, indoor or outdoor, on all properties shall be arranged so as not to reflect or cause glare onto any other property.
- C. For the purpose of this chapter, the following persons shall be presumed to be in custody and control;
 - (1) An individual owner or owners where the premises are owner occupied.
 - (2) The tenant where the premises are leased.

(3) A manager or person in charge of the premises.

§ 102-4. Approved materials and methods of construction or installation/operation.

The provisions of this chapter are not intended to prevent the use of any design, material or method of installation or operation not specifically prescribed by this chapter, provided that any such alternative has been approved. The Building Official may approve any such proposed alternative, provided that:

- A. It provides at least approximate equivalence to the applicable specific requirements of this chapter.
- B. It is otherwise satisfactory and complies with the intent of this chapter.
- C. Outdoor light(s) are fully shielded and not higher than 30 feet above ground level if attached to a pole or above the bottom of the roofline if attached to a building.
- D. Outdoor lighting under canopies or overhangs are fully shielded and not higher than 30 feet from ground level.
- E. The highest part of any bulb or light fixture is used in determining whether light(s) meet the height limitations of this chapter.
- F. All exterior light(s) or lighting are to be locked in a fixed position.

§ 102-5. Shielding/Filtering required.

- A. All outdoor lighting fixtures shall have shielding as required by this chapter.
- B. Metal halide fixture lamp types shall be filtered.

§ 102-6. Submission of plans; evidence of compliance with regulations.

- A. Submission contents. The applicant for any permit required by any provision of the laws of this town in connection with proposed work involving outdoor light fixtures shall submit (as part of the application for permit) evidence that the proposed work will comply with this chapter. The submission shall contain but shall not necessarily be limited to the following, all or part of which may be part of or in addition to the information required elsewhere in the laws of this town upon application for the required permit:
 - (1) Plans indicating the location of all exterior lighting on the premises and the type of illuminating devices, fixtures, lamps, supports, reflectors and other devices.
 - (2) A description of the illuminating devices, fixtures, lamps, supports, reflectors and other devices, and the description may include, but is not limited to, catalog cuts by manufacturers and drawings (including sections if needed to make the application clear).
 - (3) Photometric data, such as that furnished by manufacturers, or similar material showing the angle of cut off or light emissions.
- B. Additional submission. The plans, descriptions and data required in this section shall be sufficiently complete to enable the Building Official to determine readily whether compliance with the requirements of the Code will be secured. If such plans, descriptions and data cannot enable this determination, by reason of the nature or configuration of the devices, fixtures or lamps proposed, the applicant shall additionally submit evidence of certified reports of tests showing compliance, provided that these tests shall have been performed and certified by a recognized testing laboratory.
- C. Lamp or fixture substitution. Should any outdoor light fixture be changed after the permit has been issued, a change request must be submitted to the Building Official for his or her approval, together with adequate information to assure compliance with the chapter, which must be received prior to substitution.

§ 102-7. Prohibitions.

- A. Certain fixtures and lamps. The installation or use of any mercury vapor, low-pressure sodium, high-pressure sodium, metal halide, fluorescent, quartz or any incandescent lighting fixture or lamp greater than 160 watts which is not fully shielded as provided in the chapter.
- B. Laser source light.
- C. Searchlights.

§ 102-8. Restrictions on use.

The following apply to lamps (bulbs) with or without shielding or filtering and to lighting fixtures:

- A. Spotlights and floodlights shall be arranged so as not to directly illuminate structures on adjacent or other properties.
- B. Illumination by any device or combination of devices (including those cited in Subsection A above) that is/are located within a structure, attached to a house or other structures or located anywhere on a residential or commercial property shall not produce light intensity at any adjacent property boundary in excess of five (5) footcandles as measured by a light meter or similar device.
- C. Special attention shall be given to exposed light bulbs that are unprotected by filtering covers or shielding or not recessed into porch ceilings or roof overhangs. Such exposed light bulbs may cause glare even if all of the other provisions of this article are observed. If this occurs, corrective action, such as shielding or filtering, shall be taken.

§ 102-9. Temporary exemptions; exceptions.

- A. Request; renewal; information required. Any person may submit a written request, on a form prepared by the town, to the Building Official for a temporary exemption from the requirements of the chapter.
- B. Approval; duration. The Building Official shall have five business days from the date of submission of the request for temporary exemption to act, in writing, on the request. If approved, the exemption shall be valid for not more than 30 days from the date of issuance of the approval. The approval shall be renewable at the discretion of the Building Official upon a consideration of all the circumstances. Each such renewed exemption shall be valid for not more than 30 days.
- C. Disapproval; appeal. If the request for temporary exemption is disapproved, the person making the request may appeal to the Town Council pursuant to § 102-12.
- D. Excepted from this chapter is lighting provided by the Town of Fenwick Island, county or state governments and temporary emergency lighting provided by police, firemen, electric utility companies and other such organizations. When needed, the town may allow individual residents to provide temporary emergency lighting.
- E. Exterior holiday lights are exempt.

§ 102-10 . Other exemptions.

Outdoor lighting fixtures installed prior to and operable on June 21, 1996 shall comply with the requirements of this chapter no later than July 31, 2016.

§102-11. Written notice of violation.

In the event any person shall be found in violation of any section of this chapter, he/she or it shall be given notice in writing, by certified mail, return receipt requested, with copy by the same method to the owner of the property if different from the person given notice. The owner shall correct the violation within 30 days of the mailing of such notice.

§ 102-12 . Appeals.

Any person aggrieved by any decision of the Building Official made in administration of this chapter has the right to appeal to the Town Council, within 15 days of receipt of notice, by giving written notice of his or her election to do so to the office of the Town Manager and upon payment of a fee as set by resolution of the Town Council from time to time; the Town Manager shall notify the Secretary of the Town Council and shall transmit to the Secretary all the papers constituting the record upon which the decision appealed from was taken. Town Council shall set a date, time and place for the hearing of the appeal, which time and date may be at a regular Town Council meeting or a special meeting of the Town Council, so long as the applicable notice and time requirements may be met. Notice of the appeal and scheduling of the appeal before Town Council shall be sent to the appellant at least 15 days prior to the hearing date. In the event of such an appeal, enforcement is stayed until a decision has been reached by Town Council. Any decision made by Town Council is final.

§ 102-13. Violations and penalties.

Any person found guilty of violating any of the provisions of this chapter shall, upon conviction thereof, be subject to a fine of \$100 as well as costs of prosecution and any court-imposed assessments. Each day that a person continues to violate the provisions of this chapter shall be deemed to be a separate offense.

§ 102-14. Applicability; severability.

- A. The provisions of this chapter are in addition to, and not in derogation of, the provisions of any other applicable laws governing lighting, including but not limited to the provisions of § 135-2H and I.
- B. The provisions of this chapter are severable. If any section, subsection, sentence, clause or phrase of this chapter or its application to any person or circumstance is held invalid by the decision of any court of competent jurisdiction, the remainder of this chapter is and shall remain in full force and effect.